

Chapter Four: Determining Eligibility



In the previous section, the discussion focused on legal requirements for liaisons and school districts related to identifying homeless students from a broad perspective, as well as general tips and strategies that the liaison can use to increase student identification. This section will also have tips and strategies, but the discussion will move deeper into the topic and examine how to determine the eligibility of individual students.

Section 4.1 Steps to Determining Eligibility

Each student has a unique housing situation; as a result, determinations regarding eligibility and services under McKinney-Vento must be made on a case-by-case basis for each student. At times, making determinations about the homeless status of a student is extremely simple as the student clearly meets the criteria of lacking a fixed, regular, and adequate nighttime residence. Unfortunately, there are also times when it can be difficult to tell if the student's housing situation meets the criteria. Regardless of the ease in identification, the process of determining a student's eligibility involves three basic steps.

- 1) Gather all the relevant information.
- 2) Analyze what you know.
- 3) Seek consultation as needed.

If your district uses a residency questionnaire during enrollment, you may have all the information that you need to make a housing status determination by simply looking over the information provided about the student on the form. However, many situations require the liaison to follow up with additional questions about the student's housing to get further clarification. If you need to follow up with a family or unaccompanied youth to ask additional questions, it is important to explain to the family or youth that the purpose for the questions is to determine if the student is eligible for additional educational supports. Considering the nature of the information being shared, some families or students may be hesitant to provide details. As a result, it is also important to have discussions regarding potential

Homelessness is defined as lacking a fixed, regular, and adequate nighttime residence. Situations specifically described in the McKinney-Vento Act include sharing housing due to loss of housing, economic hardship, or a similar reason, living in hotels, motels, trailer parks, or camping grounds due to lack of adequate housing, living in emergency or transitional housing, children abandoned at hospitals or awaiting foster care. It also includes a primary nighttime residence that is not designed for or ordinarily used as a sleeping accommodation for humans, living in cars, parks, public spaces, abandoned buildings, substandard housing, bus or train stations, and migratory children living in one of the circumstances described previously. For the full definition, see Appendix 4.A Legal Definition of Homelessness.

homelessness and related services in a location that provides privacy and discretion. Similarly, it is advisable that liaisons avoid using the word homeless as some families do not realize they qualify as homeless or may be too embarrassed by the label. Using terms like families in transition, displaced, or referring to temporary housing situations can help to reduce the stigma experienced by students and their families.

Once you have gathered what seems to be all the relevant information, it is time to put the pieces of the puzzle together and determine if the student lacks a fixed, regular, and adequate nighttime residence. Remember, the student's housing must meet all three criteria to be considered permanently housed. If one or more of the three criteria (fixed, regular, and adequate) is missing, the student would be considered homeless under the McKinney-Vento Act's definition.

While homeless is a term that is defined in the law, the terms fixed, regular, and adequate are not. As you determine a student's eligibility to be considered homeless, it may help to consult definitions offered by standard reference dictionaries, i.e., *Merriam-Webster's Collegiate Dictionary* and *Ballentine's Law Dictionary*. Fixed is defined as "not subject to change or fluctuation" (*Merriam-Webster's Collegiate Dictionary*, Tenth Edition) and inhabitant is described "as distinguished from an occasional lodger or visitor" (*Ballentine's Law Dictionary*, Third Edition). The term regular is also defined

by Merriam-Webster as "normal or standard." *Ballentine's Law Dictionary* further defines it as "consistent," while adequate is described as "fully sufficient and equal to what is required, as well as lawfully and reasonably sufficient" (*Ballentine's Law Dictionary*, Third Edition). In other words, if a housing situation does not clearly fall under one of the categories provided in

the definition of homelessness provided in the law, you should ask yourself if the student can go to the same place every night to sleep in a safe and sufficient space. If the answer is no, the student likely meets the criteria of lacking a fixed, regular, and adequate nighttime residence and should be considered homeless.

Unfortunately, even after gathering good information, talking with parents or guardians, and comparing your notes to the law, it can still be difficult to tell if a student qualifies as homeless at times. In that case, you have options to get help making a determination. Much like every public school district has a liaison for homeless education, every state has a State Coordinator for homeless education. The responsibilities of State Coordinators include providing technical assistance to local liaisons, which means they can be a great resource when trying to make housing status determinations. A directory including State Coordinator contact information is on the NCHE website at http://center.serve.org/nche/states/state_resources.php. In addition to contacting your State Coordinator for insight, NCHE operates a helpline which liaisons can contact at (800) 308-2145 or homeless@serve.org. Another option is to reach out to other local liaisons in your area with whom you have a collaborative relationship. Regardless of which option you choose, connecting with someone else on a confusing case can ensure that students are appropriately identified and connected to resources. Do keep in mind that while consultation with others can result in benefits like further information or problem solving, it is ultimately the liaison's responsibility to make the determination regarding the student's eligibility.

Section 4.2 Complex Conditions: Doubled-Up

Doubled-up situations can be particularly confusing when making housing determinations, because it can be difficult to discern fixed housing from temporary. The law refers to this category of homelessness as “sharing housing due to loss of housing, economic hardship, or similar reason” [42 U.S.C. § 11434a(2)(b)(i)]. According to data collected by the U.S. Department of Education, this category of nighttime residence is the type experienced by the largest number of students each year (NCHE, 2013).

If the reason the family or youth moved in with a family member or friend is clearly due to loss of housing or even job loss, it can be easy to determine that the housing fits the category of doubled-up. Similarly, sometimes shared

housing is clearly inadequate and therefore easy to identify. However, some situations are less clear as homelessness can last from a few hours to many years and may involve a variety of circumstances. It is important to keep in mind that the reason for the lost housing is not defined in the law and can include a wide range of catalysts such as unpaid rent or mortgage payments on the part of the family or landlord, housing covenant violations, fires, natural disasters, and more. Additionally, there is no time limit on homelessness. As long as the student fits the definition of lacking a fixed, regular, and adequate nighttime residence, the student will be eligible for McKinney-Vento services.

If you encounter a confusing shared housing situation, asking some of the following questions may help you determine if the student is eligible for assistance under the McKinney-Vento definition:

Why did the family move in together? Was it for mutual benefit or due to a crisis or other precipitating event?

Is there a plan for the household to remain intact over a long term, or is it a short term situation?

Where would the family be if they were not able to stay where they are? In a clearly homeless situation or in another apartment or house?

Does everyone have a bed to sleep in? Is the plumbing and electric service safe? Is the housing otherwise adequate?

Is the family being added to the lease, or have they signed a lease?

Does the homeowner or renter have a legal right to force the family to leave without cause if they choose to do so?

Not all doubled-up situations are homeless according to the law, but they do often provide a feasible option for families when shelters are unavailable or full. In the instance that a family has doubled-up with another, only the family who is temporarily staying in the housing should be considered homeless, with very rare exception. Liaisons should re-evaluate the housing

of homeless students at the beginning of each school year to verify that the student still lacks fixed, regular, and adequate housing.

Section 4.3 Complex Conditions: Awaiting Foster Care Placement

Students awaiting foster care placement experience high levels of housing instability and school mobility, which can create academic challenges for the students. As a result, students who are *awaiting foster care* are included in the McKinney-Vento Act definition of homelessness [42 U.S.C. § 11434(a)(2)(B)(i)]. Each state has the ability to develop legislation or policy regarding the term awaiting foster care, and some, like California and Missouri, have developed policy specific to the topic. As a result, it is important to consult with your State Coordinator to ensure that you have the most up-to-date information about the laws and policies for serving students who are awaiting foster care placement.

To remove a child from the home, an emergency order must be issued by a court or judge. As this emergency order only provides a temporary removal of the child from the home, a hearing must take place to determine if it is safe for the child to return home or if foster care is necessary. This first hearing is often referred to as an initial hearing, preliminary protective hearing, shelter care hearing, detention hearing, emergency removal hearing, or temporary custody hearing (Jones, 2006). It is often during this time that students may be considered awaiting foster care and covered under the homeless definition in the McKinney-Vento Act. As each situation is evaluated, the housing of children who are awaiting foster care placement should be compared to the standard of lacking fixed, regular, and adequate nighttime residence in order to determine if they are eligible to be considered homeless.

The Fostering Connections to Success and Increasing Adoptions Act of 2008 is federal legislation that includes information about educational services for students once they are no longer deemed awaiting but are placed in foster care and therefore not explicitly covered by the McKinney-Vento Act. To learn more about the Fostering Connections Act, please visit the U.S. Administration for Children and Families website at: <https://www.childwelfare.gov/fosteringconnections/>.

Section 4.4 Complex Conditions: Unaccompanied Homeless Youth

Over time, the law has been adjusted through reauthorization to better meet the needs of students experiencing homelessness. One such adjustment includes the insertion of a definition for *unaccompanied youth* in law, along with information about rights specifically for unaccompanied homeless youth. An unaccompanied youth is a youth who is “not in the physical custody of a parent or guardian” [42 U.S.C. § 11434(a)(6)].

It is important to note that the definition of unaccompanied youth does not automatically indicate that the youth is homeless, but that the student is separated from the physical custody of a parent or guardian. In other words, not all unaccompanied youth are homeless. Any unaccompanied youth, however, who is residing in a situation that is not fixed, regular, or adequate, is considered a homeless unaccompanied youth. When making a determination about McKinney-Vento rights for youth, liaisons must determine if the student is both homeless and unaccompanied as the student could be one or both. When working with youth, evaluating the housing status before considering unaccompanied status can make the process less confusing. If the situation is not homeless, the youth is not afforded rights under the McKinney-Vento Act, even if the student is unaccompanied; in this instance, state or local policy will apply.

It is also important to note that the definition discusses physical custody. A parent or guardian could still retain legal custody of a youth, but not have physical custody of the youth. More information about the rights of this subpopulation of homeless students will be discussed in Chapter 9 Unaccompanied Homeless Youth.

Section 4.5 Complex Conditions: Substandard Housing

When considering the definition of homelessness, the term adequate is often associated with substandard housing. Substandard housing does not have a definition in federal law or rule. This can lead to frustration on the part of liaisons making eligibility determinations, but it also allows liaisons to have flexibility in making determinations that reflect regional norms and community standards that would be difficult to capture in a single definition applied to the entire country. One simple consideration for liaisons is to determine if the housing is up to state or local building codes and health and

safety codes. If it is not, the housing is probably substandard and any student residing there would likely meet the definition of homeless due to inadequate housing.

Examples of substandard housing could include homes:

- without adequate heat, electricity, or water;
- with unsafe heat sources or electrical service;
- with unsafe conditions, such as holes in flooring;
- with a kitchen or plumbing that is inoperable; or
- condemned by housing or other government authorities.

Inadequate or substandard housing can also refer to conditions that go beyond the structure of the building, such as overcrowding. As you consider if a home is adequate, it may be helpful to ask yourself, “Is this home safe? Does it meet basic needs and provide sufficient space for the individuals living in it?” If the answer is no to any part of those questions, the housing may be inadequate and indicate homeless conditions.

Section 4.6 Complex Conditions: Natural Disasters

Mental health experts consider returning to school a critical step in the healing process for children and youth whose lives have been disrupted by disasters (UCLA, n.d.). Going to school helps these students find the structure, normalcy, and routine that is essential to their health and well-being. Children and youth who are displaced by disasters, like other students in homeless situations, are forced to live in a variety of unstable, temporary arrangements. These arrangements include facilities set up by relief and community agencies, as well as motels, cars, campgrounds, and sharing the housing of others. Students displaced by disasters will generally meet the definition of homelessness in the McKinney-Vento Act.

Section 4.7 Do’s and Don’ts for Confirming Eligibility

Determining the eligibility of students as homeless can be a complicated process at times. By having a policy or a set of procedures in place, you can simplify the process and facilitate the timely enrollment of homeless students. Having policies and procedures in place ensures that your district is in compliance with the federal law and can also help your district avoid

invasive or threatening techniques that are inappropriate or damage the relationship of the school with families and the community.

The following list includes strategies to help liaisons confirm the eligibility of students as homeless.

- Do implement the use of a district-wide residency questionnaire.
- Do have parents, youth, or caregivers sign enrollment forms indicating that McKinney-Vento services are offered based on information they have provided about their living situations.
- Do use only school staff trained on the McKinney-Vento Act and homelessness to do home visits.
- Do use visits only when necessary. Do explain to the family, youth, and the homeowner why the visit is occurring. Assure them that all information will remain confidential, and conduct only the minimum investigation necessary to verify the living situation.
- Do collaborate with neighboring school district liaisons.
- Do contact previous schools to determine if the student was identified as homeless while attending that school.
- Do use caller ID to verify when parents or youth call from a hotel, motel, or shelter.
- Do talk with parents and youth about their situations, focusing on basic questions and using care and sensitivity.
- Do work with parents, youth, and caregivers to determine if they are able to provide any documents that could confirm their living situations.

Keeping interactions with families and youth positive and supportive instead of invasive and threatening is essential to keeping homeless students connected to school.

- Don't contact landlords or housing agencies to conduct investigations about a student or family as it violates the Family Educational Rights and Privacy Act (FERPA) and is unlikely to provide useful information.
- Don't conduct surveillance of students or families, such as following them, observing them from outside their residences, or talking to neighbors about their living situations.
- Don't use police officers for home visits.
- Don't require documents like eviction notices, utility bills, occupancy permits, or notarized letters from host families.

- Don't force caregivers to obtain legal custody or guardianship. The McKinney-Vento Act requires the immediate enrollment of unaccompanied youth; legal custody or guardianship cannot be prerequisites and are not appropriate in many instances.
- Don't force people into shelters or onto the streets as a prerequisite for McKinney-Vento services.

NCHE has several briefs on the topic of confirming the eligibility of homeless students that can be used to train school staff on the definition of homelessness and appropriate procedures.

Section 4.8 Useful Links

Issue Brief: *Confirming Eligibility for McKinney-Vento Services: Do's and Don'ts for Local Liaisons*

<http://center.serve.org/nche/downloads/briefs/verif ll.pdf>

Issue Brief: *Confirming Eligibility for McKinney-Vento Services: Do's and Don'ts for School Districts*

<http://center.serve.org/nche/downloads/briefs/verif sch.pdf>

Issue Brief: *Determining Eligibility for Rights and Services Under the McKinney-Vento Act*

<http://center.serve.org/nche/downloads/briefs/det elig.pdf>

Issue Brief: *Meeting the Needs of Students Displaced by Disasters: Youth on Their Own*

<http://center.serve.org/nche/downloads/briefs/csds youth.pdf>

Issue Brief: *What School District Administrators Should Know About the Educational Rights of Children Displaced by Disasters*

<http://center.serve.org/nche/downloads/briefs/csds admin.pdf>

Section 4.9 Resources and Tools for Chapter Four

Appendix 4.A Legal Definition of Homelessness